



June 28, 2011

*Via E-mail, facsimile, and U.S. Mail*

Jeff Nave, Esq.  
Foster Pepper PLLC  
422 West Riverside Ave, Suite 1310  
Spokane, WA 99201-0302  
Fax: 800-533-2202  
NaveJ@Foster.com

Re: Review of financing documents for the Lummi Nation

Dear Mr. Nave:

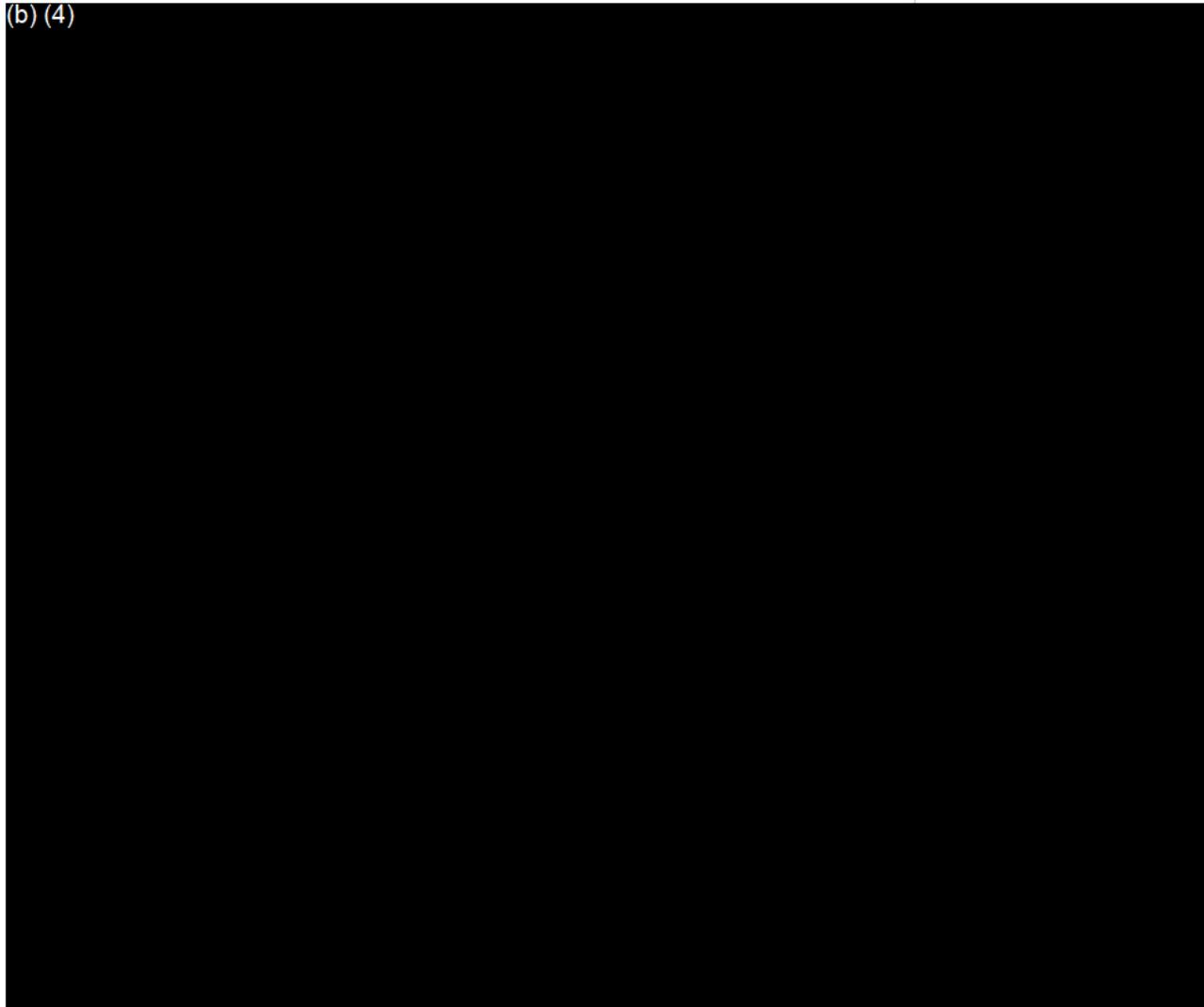
This letter responds to your April 18, 2011 request on behalf of the Lummi Nation for the National Indian Gaming Commission's Office of General Counsel to review the Nation's financing documents with Wells Fargo Bank. Specifically, you have asked for my opinion whether the documents are management contracts requiring the NIGC Chairwoman's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the financing documents violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following unexecuted submissions (collectively, "the Financing Documents") which were represented to be in substantially final form:

(b) (4)

A large black rectangular redaction box covers the majority of the lower half of the page, obscuring the content of the financing documents mentioned in the text above.

(b) (4)



The Financing Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. *See* [www.nigc.gov/Reading\\_Room/Management\\_Review\\_Letters.aspx](http://www.nigc.gov/Reading_Room/Management_Review_Letters.aspx). Applying the same analysis here, it is my opinion that the Financing Documents are not management contracts and do not require the approval of the Chairwoman. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement. I note, however, that the Financing Documents have been submitted to us as unexecuted drafts that are in substantially final form. To the extent that they change in any material way prior to closing, this opinion shall not apply.

I anticipate that this letter will be the subject of Freedom of Information Act ("FOIA") requests. Since we believe that some of the information in this letter may fall within FOIA exemption 4(c), which applies to confidential and

Re: Review of financing documents for the Lummi Nation  
June 28, 2011  
Page 3 of 3

proprietary information the release of which could cause substantial harm, I ask that you provide me with your views regarding release within ten days.

I am also sending a copy of the submitted Financing Documents to the Department of the Interior Office of Indian Gaming for review under 25 U.S.C. § 81. If you have any questions, please contact NIGC Staff Attorney Jennifer Ward at 202-632-7003.

Sincerely,



Michael Gross  
Associate General Counsel, General Law  
Acting General Counsel

cc: Paula Hart, Director, Office of Indian Gaming  
(via US Mail w/ incoming)

Mary Neil, Counsel for the Lummi Nation  
(via US Mail and e-mail: MaryN@lummi-nsn.gov)

David Lin, Orrick, Herrington & Sutcliffe LLP (Counsel for Wells Fargo)  
(via US Mail and e-mail: dlin@orrick.com)

Kent Richey, Faegre & Benson (Counsel for Merit Management)  
(via US Mail and e-mail: KRichey@Faegre.com)